No. 12206

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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GEORGE T. GOGGIN, Receiver of the Estate of Salsbury Motors, Inc.,

*Appellant,*

*vs.*

BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION,

*Appellee.*

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## PETITION FOR REHEARING.

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*To: The Honorable Judges of the United States Court of Appeals for the Ninth Circuit:*

Your petitioner herein, George T. Goggin (hereinafter referred to as "Receiver"), as receiver in bankruptcy of the estate of Salsbury Motors, Inc. and appellant herein, respectfully petitions this Honorable Court for a rehearing in the above entitled matter, the judgment of this Court having been rendered herein on February 23, 1950, with a written opinion by Judge Stephens after a hearing before Judge Stephens, Judge Pope and District Judge McCormick.

## Introduction.

The statute involved is Section 3054 of the Civil Code of the State of California which reads as follows:

> "A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business."

The opinion of this Court seems to admit that there was no express extension of credit ("It is true that no credit upon specific items was given upon the delivery of any of the collection items to the Bank, nor had such credit been given or asserted prior to the institution of these proceedings . . .") upon the delivery of the commercial paper involved: therefore the relationship admittedly commenced with the Bank having *custody* of the paper, not possession, and the parties were in the position of principal and agent. Did this situation change factually or by legal effect? Appellant earnestly contends there was no change and respectfully challenges the finding of this Court that if the debtor impliedly agreed to do all of its banking with the Bank that this was an implied agreement to give the Bank a lien upon all commercial paper delivered for collection only. This reasoning would constitute a conclusion unwarranted by the hypothesis involved. Would the agreement to give the Bank all of its banking business forbid the debtor from collecting its own commercial paper and thereby save the Bank's charges? Obviously this Court did not and cannot find an implied agreement that the debtor would place its commercial paper with the Bank, so logic compels a denial of the entire basis apparently relied upon by this Court in drawing the unwarranted conclusion that by agreeing to give the Bank its

banking business, it gave the Bank a banker's lien on all property in its custody. If the Bank had allowed the debtor to draw in advance upon the commercial paper involved, this would be ". . . in the course of the business" of a Bank, but the simple collection of commercial papers can be handled by an owner, a bank, a collection agency or an attorney, and cannot be considered as the banking business intended by Section 3054 of the California Civil Code; nor could there ever be any balance due the Bank in the course of that business because no creditor-debtor relationship is ever created.

## Grounds for Petition.

This petition for rehearing is based upon the following grounds:

A. The opinion of this Court makes an implied finding that credit was extended by the Bank upon the faith of the debtor's notes and drafts. This implied finding is contrary to the evidence, to the express stipulation of the parties and to the findings of the Referee.

B. The opinion in the instant case extends the banker's lien beyond its rightful scope in that a borrower who is persuaded to use all of the bank's facilities (to the profit of the bank) will be held to have subjected his property to the banker's lien even though credit was never advanced in reliance upon that property.

1. This phase of the opinion herein is particularly harmful in chapter and bankruptcy proceedings, since the banks obtain a secret lien and a preference as to property commonly believed by other creditors to be available for the payment of debts.

2. The extension of the banker's lien in the instant case is without legal or equitable justification for the reason that the banks persuade borrowers to use all banking departments as a means of obtaining business and profits; thus, the banks acquire fees for the use of their services and an alleged lien by implication as well.

## I.

## No Credit Was Extended by the Bank Upon the Faith of the Notes and Drafts Involved in the Instant Case.

The Opinion of this Honorable Court in the present appeal (Printed Opinion pp. 3-4) contains the following statement:

> "The facts of the case, succinctly stated by counsel, indicate that Salsbury was doing a rather large continuing general banking business with the Bank and that when the Bank entered upon the loan arrangements with Salsbury it fully expected this relationship to continue for the mutual business benefit of both parties under their common knowledge that the securities left with the Bank by Salsbury were a part of the business, all of which constituted the basis for the credit given. To that extent the advances were made upon the credit of the very items proceeds of which are here claimed by the receiver."

In the above quoted paragraph, this Court was referring to a stipulation of facts made by counsel for the Receiver and counsel for the Bank at a hearing before the Referee on the question of summary jurisdiction. [Tr. p. 104.] Counsel for the Bank expressly stated at that time that the stipulation was "for the purpose only of this pro-

ceeding to determine, that is to permit the Court to determine whether or not there is a color of title in the bank on this objection to this petition." [Tr. p. 108.] The referee ultimately decided that there was summary jurisdiction in the bankruptcy court to decide the questions involved in the receiver's objection to the Bank's claim; indeed, the referee decided, presumably upon the basis of that stipulation, that "the Bank of America had not extended to the Debtor any credit upon the faith of said note of Jacques Power Co. . . ." [Tr. p. 45.] This stipulation was pertinent to the present appeal since the Bank had raised the question of summary jurisdiction before this Court. (Appellee's Br. p. 27, *et seq.*)

Thus, although the parties stipulated, for the purpose of determining summary jurisdiction and for that purpose only, that there was "apparently an implied understanding," that all of the debtor's usual banking transactions would be handled through the Bank, there was never any implication, intended or otherwise, of advancement of credit upon the faith of the notes and drafts. The referee, as trier of fact, drew the opposite inference. As will be related in greater detail below, even when the referee eventually ruled that the banker's lien entitled the Bank to seize the notes and drafts, he was unable to find any extension of credit.

Another stipulation of facts was drafted, in more formal fashion, for the determination on the merits. The governing stipulation on the question of the advancement of credit begins on page 68 of the Transcript herein. In that stipulation, the matter of credit is handled as follows:

> "None of the notes and drafts or bills of lading accompanying the same deposited by the debtor with claimant as collection items during the course of the

operation of the business of the debtor from the time of the loan agreement on February 18, 1946, to the date of filing the petition in the above-entitled proceedings was at any time pledged by the debtor to secure any indebtedness of the debtor to claimant. No immediate credit was given by claimant to the deposit accounts of the debtor upon the deposit of any of said collection items but all of said items were deposited with claimant for collection and credit of the proceeds of the collection to the deposit account of the debtor when said collections were completed. During the period from February 18, 1946, to August 19, 1947, claimant did, in the usual course of business, credit to the deposit account of the debtor, as and when received, the proceeds of all collection items in accordance with the instructions of the debtor. In each of the collection items in the hands of claimant on August 20, 1947, the debtor had issued and claimant had accepted instructions to credit the proceeds of said collections when received to the commercial deposit account of the debtor." [Tr. p. 76.]

The referee made a finding of fact based upon this stipulation and his finding was worded in substantially identical form. [Tr. p. 89.] Accordingly, it is clear that the referee below, as the original trier of facts, scrupulously avoided the making of any finding that credit had been extended upon the faith of any of the notes and drafts involved in the present controversy. Instead, the record indicates that the referee based his ruling upon a purely mechanical interpretation of Section 3054 of the California Civil Code and upon a dictum of the Supreme Court of California in the case of *Gonsalves v. Bank of America* (1940), 16 Cal. 2d 169. The receiver does not wish to be understood as contending that this Honorable

Court is in any way required to reverse a judgment because the court below has relied upon an erroneous interpretation of the law. But the receiver does strenuously assert that the trier of facts in the instant case carefully and consistently avoided any finding to the effect that credit had been extended upon the faith of the notes and drafts here involved; rather, it is clear that the referee was unable to find any such extension of credit.

It is also significant that the Bank has never seriously contended that credit was extended upon the faith of these notes and drafts. At the outset of its brief before this Court, the Bank indicated that it would prove that "general credit" had been extended to the debtor:

> "The general course of dealings hereafter discussed will indicate that under the authorities there would be a presumption that general credit was extended to the Debtor upon the basis of that course of dealing." (Appellee's Br. p. 2.)

One may then search the remainder of the Appellee's Brief in vain to unearth any indication of a state of facts showing that general credit had been extended to the debtor herein. In fact, the Bank's principal argument was to the effect that, as a proposition of general law, a bank is entitled to a banker's lien upon collection items which have been placed in the hands of the bank for collection only. (Appellee's Br. pp. 4-11.) Subsequently, the Bank demonstrated the meaning of its earlier statement that "there would be a presumption that general credit was extended to the Debtor upon the basis of that course of dealing." (Appellee's Br. p. 2.) The Bank stated:

> ". . . The very words quoted so often 'supposed to have been made' indicate not that advances must be made but rather that there is a presumption that

'advances have been made upon the credit of the securities in the bank's possession.'" (Appellee's Br. p. 15.)

Thus, the Bank relied not upon any actual extension of credit but upon its interpretation of the authorities allegedly holding that where an individual owes money to a bank and has securities in the hands of the bank, *these two factors compel a presumption that there have been advances made upon the faith of the securities in the hands of the bank.* As was later pointed out in the Receiver's Reply Brief, the Bank's own authorities demonstrated the error in its position (pp. 4-7).

The foregoing outline of the record and arguments before this Court has been presented for the purpose of demonstrating that at no time did any party specifically urge or prove any extension of credit, actual or implied, upon the faith of the notes and drafts involved herein; and the referee was unable to find any such advances. His only findings in this regard were that at no time had the notes and drafts been pledged as collateral and that no immediate credit had been extended. After collection, of course, the proceeds were reflected in the debtor's commercial account. It was believed that the issue was thereby clearly and narrowly defined. The Bank, supported by the courts below, contended that the mere dual facts of indebtedness plus notes and drafts in its custody gave rise to the lien. The Bank strenuously urged that the advancement of credit is not a requisite for the application of the banker's lien but that such credit will be *presumed* as a sort of legal fiction. The receiver, on the other hand, urged with equal vigor that the banker's lien springs from the law merchant and that there are certain requi-

sites for its enforcement. The receiver cited cases to show that the mere facts of indebtedness, plus property of the debtor in the hands of the bank, does not give rise to the exercise of the banker's lien. There are many situations (such as a pledge for a specific indebtedness, property held in trust, property held in safe deposit boxes, property in escrow, etc.) where the banker's lien is inapplicable because no advances have been made upon the faith of this property. And the receiver cited many cases in which the banker's lien was held inapplicable to notes deposited with a bank for collection only *where no credit had been advanced.* We do not believe that it is necessary to restate all of these cases since they are contained in the Appellant's Opening and Reply Briefs. The facts of the present case compelled this narrowing of the issues; the Bank was forced to its position that the banker's lien is applicable irrespective of advances of credit made upon the faith of the property in its hands *for the reason that there had been no such advances.*

For the reasons hereinabove stated, the receiver respectfully submits that this Honorable Court has grounded its disposition of the instant appeal upon an implication that is contrary to the stipulated facts, to the Findings of Facts by the courts below and to the understanding, as well as to the arguments, of counsel for both sides. It is further earnestly and respectfully submitted that the true issue in the present case is one of great significance to the administration of the bankruptcy laws, namely, whether notes and drafts in the hands of a bank for collection only are subject to the banker's lien at the "date of cleavage" where no credit has been advanced upon the faith of those notes and drafts.

It is important that this issue be decided squarely.

## II.

### Even Assuming an Implied Understanding That All of the Debtor's Usual Banking Transactions Would Be Handled Through the Various Departments of the Bank of America, Still This Would Not Constitute an Implied Reliance Upon the Notes and Drafts.

While the issue as outlined heretofore in this PETITION is of great importance in every bankruptcy, the Opinion of this Honorable Court in the present case has raised an issue of even higher significance. If the receiver correctly interprets the Opinion herein, it appears that a very common business practice will result in grave injury to the non-bank creditors of a debtor or bankrupt. It is by no means unusual that a bank should desire and encourage a borrower to use all of the facilities and departments of the bank. If a bank lends money to a business man, it can and doubtless will advise him that the bank expects to obtain the borrower's collection business, if any. Such a proposal would not startle business men who have dealt with banks. But if such an amicable understanding were reached between a borrower and a bank, would this mean that the business man has received such credit, implied or otherwise, upon the faith of notes and drafts deposited with the bank's collection department as would satisfy the historic and present requirements of the banker's lien?

In his earlier briefs before this Court, the receiver has demonstrated that under the cases, the banker's lien is considered to be in the nature of an "implied pledge." (Appellant's Op. Br. p. 27, fn. 9.) Even where the property has been placed in the hands of the bank as collateral for a specific extension of credit, the property cannot thereafter be seized where the particular loan has been repaid

and another indebtedness to the bank is later incurred. (Appellant's Op. Br. pp. 35-39, fn. 16-20.) The authorities heretofore mentioned demonstrate that the historic function of the banker's lien has been to secure the bank for advances *actually made upon the credit of the particular property involved.*

As stated by this Honorable Court in its opinion herein, the function of the banker's lien under the law merchant has not been broadened by statute. It is therefore essential to compare the strict limitations historically placed upon the exercise of the lien with the broad extension authorized by the opinion of this Court. In all of the cases cited by the receiver in his briefs, where the lien was claimed but not allowed, the customer owed a debt to the bank. Yet, the courts refused to hold the lien applicable because no credit had actually been extended upon the faith of the notes and drafts or other property in the hands of the bank—or credit had been advanced but the particular loan repaid.

A borrower from a bank is easily persuaded to use all of the bank's functions. Business men often desire, of their own accord, to transact all of their business with one bank where they are well known. Further, the bank in turn is more prone to extend credit to its own regular customers, other things being equal. But this does not mean that the bank has extended credit upon the faith of all of the borrower's property in the bank's hands, within the meaning of the requirements of the banker's lien. Such an argument would ignore the most basic facts of commercial life.

Where banks rely upon security, they carefully so provide in their lending agreements. Of course, the setoff of deposits is by now a well established legal and business

proposition. As to all other forms of security, the banks are prone to be specific in writing. Witness, for example, the lending agreement herein; the trust deed was taken as security and it was to secure not only past, but future, loans as well. [Tr. pp. 13-36.] If the Bank in the present case had extended any credit upon the faith of the notes and drafts taken for collection only, there would doubtless have been a provision to this effect in the lending agreement.

The Bank of America in the present situation made its profit from the collections of the notes and drafts in its custody without any risk on its part. The Bank earned substantial fees from the extensive collections made for Salsbury Motors. This would normally be deemed to be its own reward. Thus, it is more logical to assume that any understanding that the Bank's collection department would be used for the collection of notes and drafts of Salsbury was predicated upon the fees to be charged by the bank for such collections.

Accordingly, there is an enormous difference between an actual extension of credit upon the faith of notes and drafts as evidenced by entries in the deposit account of the borrower, and a mere understanding that the borrower will use all banking functions of the lender in order to swell the bank's fees. It is not unnatural that large scale borrowers will be encouraged to use other departments of a bank—and a borrower may expressly agree to do so, either to ingratiate himself to the lender or to suit his own convenience. But the vast difference between such an arrangement and an extension of credit upon the faith of, for example, the placing of notes and drafts with the bank for collection only, will be clear upon the answer to this

question: Is it conceivable that the Bank actually extended credit upon the faith of these notes and drafts and yet did not mention them in the lending agreement?

Further, the collection department of a bank is not the only one that would be used by a borrower who had been advised to place all of his patronage with the bank. Certain active business men who have occasion to borrow from a bank, use escrow services extensively. It would not be unusual for the Bank to urge this borrower to use the Bank of America's Escrow Department. The motive for this would be logically explained as the desire to collect escrow fees upon the numerous transactions engaged in by this particular borrower. But does it mean, in addition, that upon bankruptcy or insolvency the Bank is entitled to assert a banker's lien upon any amount or property belonging to the borrower then in the hands of the Bank's Escrow Department? The cases are clear that the Bank cannot assert its banker's lien in this situation. (See cases cited, Appellant's Op. Br. fn. 17, pp. 37, 47; Appellant's Rep. Br. pp. 9-10.)

It is equally true that certain borrowers are large scale users of safe deposit boxes and safe deposit vaults. For certain individuals the fees for such custodial services are quite material. Thus, the Bank could and would encourage a borrower to use the safe deposit and safe deposit vault facilities extended by it rather than by a competitor. This does not mean that the items so placed in the custody of the Bank and belonging to the borrower shall be subject to the banker's lien for the payment of the original loan. (Appellant's Op. Br. pp. 26-27, fn. 9.)

Thus, even though it is possible that the borrower places notes and drafts with the bank for collection, or uses a

bank's escrow service, or uses a bank's custodial services, at the urging of the bank at the time of the making of a loan, this does not mean that the notes or drafts or other property so deposited in the usual course of other phases of the borrower's business shall be subjected to the banker's lien upon insolvency or bankruptcy.

In all of these cases the bank is merely urging the use of its facilities rather than those of a competitor in order to gain added revenue. If the parties intend the property so deposited in the hands of the bank to be collateral or security for the debt, they should so state in the loan agreement. The banker's lien has never been used for this purpose and it should not be so extended contrary to the manifest understanding of business men generally. This construction of the banker's lien would create a preference or secret lien in favor of banks contrary to the express intention of the Bankruptcy Act. Creditors dealing with a business man who has borrowed from a bank are generally mindful of the fact that deposits with that bank are subject to the rights of setoff in the event of bankruptcy or insolvency. But we submit that no creditor would believe that notes and drafts in the hands of the bank's collection department for collection only, where no credit had been extended on the faith of such notes and drafts, would be subject to a banker's lien. Under the Opinion of this Court there has been born a new type of secret lien, at least as pernicious as the type struck down by the Supreme Court of the United States in *Corn Exchange National Bank & Trust Co. et al. v. Klauder* (1943), 318 U. S. 434,

63 Sup. Ct. Rep. 79. In that case the Supreme Court clearly expressed the policy of the courts and the Bankruptcy Act against any such secret lien. In the present case there is even less equity in favor of the Bank. The Bank extended no credit and suffered no detriment in so far as these notes and drafts are concerned. The Bank has obtained a windfall over and above its right of deposit of setoff and the real property described in the trust deed, to the disadvantage of all of the general unsecured creditors of this debtor.

Accordingly, even if it can be assumed that there was a general understanding that the borrower would use the bank's facilities for all of its business, that understanding gives rise to no implication that the Bank relied upon the notes and drafts placed in its hands for collection only. Banks are well able to protect themselves when they lend money and are accordingly prone to set forth in their loan agreements the full security upon which they in truth rely. Where a bank actually extends credit upon the faith of notes and drafts, that credit will be evidenced either by a regular discounting procedure, by allowing the depositor to draw checks against anticipated collections, or by a pledge or other loan agreement. Where there has been no discounting and there has been no pledge, one may safely assume that there has been no extension of credit upon the faith of these securities. It is urgently submitted that the finding of an extension of credit in the present case, even assuming an apparent agreement by the debtor to use all of the Bank's facilities, is wholly unwarranted and extremely prejudicial to the other creditors of this debtor.

## Conclusion.

At the risk of reiteration we must vigorously contend that this Honorable Court has wholly failed to pass upon the true issues before it. Where counsel have vigorously presented an exhaustive search of points and authorities, and where the referee below and the district court have made their findings of fact, all upon issues other than the findings of fact now urged *de novo* by the appellate court, it is counsel's duty to respectfully call to the attention of this Court that it is not the jurisdiction or authority of an appellate court to act in the capacity of a trier of fact.

No contention was, or could be, raised, by reason of the stipulated facts or testimony or exhibits, that there was an actual agreement involving the extension of credit in reliance upon the handling of the collection of the notes and accounts receivable involved in the within proceeding. Therefore, there are no substantial facts in the record which could sustain the factual recitation made by this Honorable Court in its opinion entered as of the 23rd day of February, 1950.

The Bank cited the case of *In re Farnsworth* (1873), Fed. Case No. 4673, 5 Biss. 223, decided in the District Court in Illinois without any reasoning given for its opinion, and the dictum in three distinguishable cases, to-wit: *Kane v. First Nat. Bank of El Paso* (C. C. A. 5, 1932), 56 F. 2d 534; *Half Moon Fruit & Produce Co. v. Floyd* (C. C. A. 9, 1932), 60 F. 2d 799; *Gonsalves v. Bank of America* (1940), 16 Cal. 2d 169, as the basis for a contention that the notes and drafts were in the hands of the Bank of America and therefore constituted assets upon which the Bank could exercise a banker's lien. In contrast to this paucity of authority, the receiver has presented

numerous authorities, including the unequivocal statements of the United States Supreme Court, to the effect that although a bank may have custody of notes it cannot exercise a banker's lien unless it has expressly extended credit in reliance thereon.

This Honorable Court in its opinion announced the true rule of law that in collecting the notes at the time of the commencement of the bankruptcy proceedings herein the debtor corporation and the Bank were in the status of principal and agent respectively. We earnestly and sincerely contend that the relationship was automatically "frozen" as of the commencement of bankruptcy. In *Goggin v. Division of Labor Law Enforcement* (1948), 336 U. S. 118, the Supreme Court of the United States expressly held that the legal relationship of the parties dealing with a debtor or bankrupt cannot be changed after the commencement of the bankruptcy proceedings. Although this legal point is apparently considered by this Honorable Court in its opinion, its effect is declared immaterial by an unwararnted new finding of fact that there was an implied or unspoken understanding between the debtor and the Bank that the Bank would handle its collection business. Such an agreement, admitted for the purposes of argument on this Petition for Rehearing, has no relationship whatsoever to the true fundamental legal question, and that is whether or not a banker's lien exists where the notes are held by a bank in its custody on a principal-agent relationship, and without any extension of credit.

All that the debtor could have agreed to from the facts recited by this Honorable Court in its Opinion, was to allow the Bank to collect its notes, and if collected, to deposit the proceeds in its commercial account. Bankruptcy proceedings intervened before collection was effected, and

therefore the rights of the parties were frozen. By no stretch of law, equity, or otherwise could this Honorable Court be justified in finding that the Bank, contrary to the rights of all other creditors, is entitled to continue to enforce the alleged implied agreement, collect the notes, deposit the proceeds in the non-existent commercial account of the debtor, and then claim a belated banker's lien. Recognition of such an interpretation of law is a bald and outright recognition of a voidable preference. If there was an executory contract wherein the Bank was entitled to collect commercial paper, this agency was expressly terminated by the receiver as well as by force of law.

With the permission of this Court, we filed a supplemental brief which quoted in full the attitude of Congress against extending any additional protection to banks, particularly in reference to the advancement of moneys upon accounts receivable; this Honorable Court has not seen fit to determine whether the notes of the debtor, representing all of its accounts receivable and not negotiated by the Bank but merely handled by it for collection only, are such accounts receivable as are covered by the intent of Congress and the provisions of the Uniform Negotiable Accounts Receivable Act reflected by Section 3017 of the California Civil Code and the sections following. The Feb. 23, 1950, Opinion fails to comment upon this point.

If we have correctly construed the Opinion of this Honorable Court, there has been no determination of the fundamental legal question as to the scope and operation of the "banker's lien" when bankruptcy has intervened; this was the sole issue before the Referee and the District Court and, we respectfully submit, in this Court. Thus, the Opinion gives no assistance or guidance to Bankruptcy

Courts that have been and will be faced with this problem. By reason of the tremendous importance of this question to the administration of the Bankruptcy Act, this may well be a case in which this Court should certify the question to the Supreme Court of the United States for determination. Surely judicial notice may be taken of the fact that banks are creditors in almost all bankruptcies involving commercial enterprises, and that in most of these cases the banks, at the time of the commencement of the bankruptcy, have custody of certain of the credits, or assets of the bankrupt.

The Supreme Court of the United States has most emphatically stated that in bankruptcy proceedings there is no such creature as an "equitable lien" and this is reflected by opinions such as the *Corn Exchange National Bank v. Klauder, supra,* and in innumerable other decisions both before and since that date. We respectfully contend that the within Opinion of this Honorable Court does afford the Bank an "equitable lien" without expressly denominating it as such. Banks, in making loans, are very similar to insurance companies issuing policies on their printed forms; they do not need, nor deserve, the extraordinary protection of any court, especially where such protection results in an unwarranted preference over other creditors by implying an agreement which could not be enforced as a statutory lien but must be truthfully denominated an equitable lien not recognizable under our bankruptcy law as reflected by the Bankruptcy Act, as amended, and the interpretations placed thereon by the Supreme Court of the United States.

We respectfully and sincerely urge this Court to grant a rehearing and to reconsider its Opinion in light of the comments contained herein, and to make and enter an

opinion which correctly reflects a recognition of the findings of the triers of the facts in the courts below, and which applies the applicable law to these facts. As heretofore urged, we believe that such a procedure must result in a reversal of the rulings of the referee and the district court.

Dated this 23rd day of March, 1950.

Respectfully submitted,

GENDEL & CHICHESTER and
BERNARD SHAPIRO,
By MARTIN GENDEL,

*Of Counsel for Appellant, George T. Goggin, Receiver of the Estate of Salsbury Motors, Inc., Debtor.*

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**Certificate of Counsel Under Rule 25.**

I certify that in my judgment the foregoing petition for a rehearing is well founded and that it is not interposed for delay.

Dated at Los Angeles, California, March 23, 1950.

MARTIN GENDEL,